



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 18, 2011

Ms. Melissa A. Vidal  
Assistant City Attorney  
City of Laredo  
P.O. Box 579  
Laredo, Texas 78042-0579

OR2011-10224

Dear Ms. Vidal:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “Act”), chapter 552 of the Government Code. Your request was assigned ID# 424191.

The Laredo Police Department (the “department”) received two requests for information pertaining to a specified address on a specified date. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, as you acknowledge, the department failed to comply with section 552.301(b) of the Act with respect to the first request for information. *See* Gov’t Code § 552.301(b). The submitted information, therefore, is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977). The department seeks to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The purpose of the informer’s privilege is to protect the flow of information to a governmental body, rather than to protect a third person. Thus, the informer’s privilege, unlike other claims under section 552.101, may be waived. *See*

Open Records Decision No. 549 at 6 (1990). Therefore, the department's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and the department waived that claim with respect to the first request for information. Additionally, in failing to comply with section 552.301 with regard to the information responsive to the first request, the department has also waived its claim under the informer's privilege with respect to the same information responsive to the second request. *See generally* Gov't Code § 552.007 (prohibiting selective disclosure of information). Because the information responsive to the second request is a subset of the information responsive to the first request, no information may be withheld on the basis of the informer's privilege. However, we consider your remaining argument against disclosure because section 552.101 of the Government Code in conjunction with common-law privacy can provide a compelling reason to withhold information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82.

You contend the submitted information contains embarrassing facts that are of no legitimate public interest about individuals identified in the submitted information. However, the information in this instance is provided in the context of alleged criminal activity. This office has determined the public has a legitimate interest in knowing the general details of a crime. *See generally* *Lowe v. Hearst Communications, Inc.*, 487 F.3d 246, 250 (5th Cir. 2007) (noting a "legitimate public interest in facts tending to support an allegation of criminal activity" (citing *Cinel v. Connick*, 15 F.3d 1338, 1345-46 (1994))); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-187 (Tex. Civ. App.—Houston [14th Dist.] 1975) (public has legitimate interest in details of crime and police efforts to combat crime in community), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, having considered your arguments, we find the public has a legitimate interest in the submitted criminal records. We therefore conclude the department may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. Thus, we conclude the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestors. For more information concerning those rights and

responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a stylized, cursive script.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eb

Ref: ID# 424191

Enc. Submitted documents

c: Requestors  
(w/o enclosures)